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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND
THE INTERNATIONAL TRIBUNAL FOR THE
LAW OF THE SEA
Special Commission 4

CHAIRMAN'S SUMMARY OF DISCUSSIONS

Draft report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea
(LOS/PCN/SCN.4/WP.15)

1. During the spring meetings of the eleventh session of the Preparatory Commission, Special Commission 4 began and concluded the consideration of the "Draft report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea" (LOS/PCN/SCN.4/WP.15).

2. It was generally agreed that the report was not a negotiating text but a factual record of what had taken place over the last 11 years, what had been achieved and what was still pending. Therefore it was decided that general observations should be made first and that, if delegations wished to do so, they could give their remarks in writing and these would be then attached to the report. Also, specific observations should aim to correct inaccuracies in the record. The aim was to enable the Commission to make progress during the short two-week session.

Introduction of the working paper

3. In introducing the working paper, the Secretary stated that the Commission had before it the draft report to be submitted to the meeting of States Parties under paragraph 10 of resolution I (LOS/PCN/SCN.4/WP.15). He also stated that the document was a revised version of document LOS/PCN/SCN.4/WP.14, entitled "Draft outline for the report of the Preparatory Commission containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea". He pointed out that working

paper 15 took into account comments submitted by the European Community and its member States on working paper 14 (LOS/PCN/SCN.4/1993/CRP.47).

4. With regard to the structure of working paper 15, the Secretary pointed out that the report followed the important precedent of the 1946 report of the Preparatory Commission for the United Nations; it had been construed around the phrase "the Preparatory Commission recommends ..." It also contained two annexes: a list of addenda and a list of documents and Plenary documents of special relevance to Special Commission 4. He also stated that the working paper had a complete table of contents, intended to facilitate easy appreciation.

5. Introducing the changes to the working paper, the Secretary called the attention of delegations to the new title which had been harmonized with the titles of the other reports of the Preparatory Commission. However, owing to the special status of the Tribunal in the Convention, which provided for the creation of Special Commission 4 for the establishment of the International Tribunal for the Law of the Sea, a particular reference to the Convention and paragraph 10 of resolution I (not paragraph 11 as referred to in the other reports) had been introduced into the title. He also pointed out that the word "draft" in the title had been used to respect the understanding that the meeting of States Parties would be the ultimate forum to adopt the report.

General comments

6. Some delegations were of the view that the report contained too many references to documents that were not reproduced in the report. It was suggested that the report should be drafted in a sufficiently detailed manner so as to give a summary of any document referred to throughout the text. One delegation also suggested that such summaries should appear as footnotes to the text.

7. It was argued that the implementation of the above proposal would compromise the form of the report and render it too voluminous for its purpose. Nevertheless, with regard to the issue of the drafting, it was generally agreed that the other language versions would be harmonized with the original as necessary and wherever this was referred to in the deliberations.

8. The question of the accuracy of the wording used throughout the report was also discussed. It was agreed that it was necessary to respect, in the use of words, and of verbs in particular, what had transpired in the Special Commission.

9. One delegation inquired about the non-availability of some of the addenda when examining the report. It was generally agreed that delegations would be sent the addenda as soon as possible, and that their comments to the addenda and/or to the text of the report itself would be attached to the report.

10. Still on procedural matters, one delegation also stated that although the Chairman had said that the report was not a negotiating document, his delegation was unaware of any provision that would prohibit the Commission from taking action on a substantial change if it so decided.

The title

11. Some delegations suggested that the title should reflect more clearly that the report emanated from Special Commission 4. It was generally agreed that the title of the report would be placed within parentheses and preceded by the wording "Provisional report of Special Commission 4".

12. Other delegations wondered why the title referred to paragraph 10 of resolution I while the other Preparatory Commission reports referred to paragraph 11. It was understood that the provisions of paragraph 11 did not apply to the establishment of the International Tribunal for the Law of the Sea and therefore to Special Commission 4. However, paragraph 10, in comparison, provided for a report "regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea" to be submitted to the meeting of the States Parties. It was concluded that this meant that there would be two final reports of the Preparatory Commission: one "final" report under paragraph 11 and the matters dealt with by the Plenary and Special Commissions 1, 2 and 3, and "a report" on Special Commission 4 matters. Therefore, it was considered appropriate by several delegations to reproduce the whole title as found in paragraph 10 in order to avoid any confusion and to be legally correct in accordance with the 1982 Convention on the Law of the Sea. This statement was also made in response to the preoccupation of one delegation about the seemingly restrictive meaning of the word "practical arrangements" in the title as well as to the wording "draft Report" instead of "final draft Report" as found in the other Preparatory Commission reports.

Introductory note

13. Several delegations suggested that the introductory note be redrafted so as to avoid the same confusion as found previously in the title. One delegation in particular pointed out that paragraphs 2 and 4 of the introductory note had to be put in line with paragraph 10 of resolution I.

14. Another delegation suggested that the introductory note should clearly mention that the report reflected the result of the work of Special Commission 4.

15. Other delegations were of the view that the status of pending issues should also be reflected in the introductory note. To that end, one delegation from the Group of 77 suggested that there should be an index of the different programmes of work that would state what matters had been discussed and which of them had been resolved, and that would clearly identify the outstanding issues. Another delegation suggested that the introductory note should contain one or two paragraphs that would state that some issues had not been successfully discussed and should be raised again at an appropriate time. There would also be a reference to a list of pending issues. On the status of pending issues, he suggested adopting mutatis mutandis the same wording as in the relevant paragraph of the report of the Plenary (LOS/PCN/WP.52).

16. At the end, it was generally agreed that the Secretariat would redraft the introductory note taking into consideration the Commission's views and in particular, the need to clearly identify the report as emanating from Special

Commission 4, as well as the request to insert one or two paragraphs referring to a list of pending issues.

17. There were no comments on the Introduction.

Chapter I. JUDICIAL PROCEDURE

Section 1. Recommendations concerning the draft Rules of the Tribunal

18. Two suggestions were made in order for redrafting the recommendation in section I. One delegation pointed out that the word "approved" used in the first sentence did not correspond to the fact that the Commission was only giving a recommendation to the Tribunal. The word "formulated" was then suggested and generally approved by delegations. Therefore the first sentence of the recommendation would read as follows:

> "The PREPARATORY COMMISSION recommends that:
>
> > "the final draft Rules of the Tribunal formulated by the Commission ..."

19. Along the same lines, another delegation suggested replacing the words "for the adoption" by "for the determination".

20. At the end, this suggestion was not approved, but the Secretariat was nevertheless invited to redraft the recommendation using a less definitive wording.

Section 2. Composition of the Tribunal and its chambers

21. In order to respect the wording used by the Convention in its Annex VI on the Tribunal, one delegation suggested inserting the word "equitable" in the first sentence of the paragraph so that it would read as follows:

> "In connection with the equitable geographical distribution ..."

22. The suggestion was supported by the Commission.

Section 3. Official working languages

23. One delegation from a regional group drew attention to the question of official languages and insisted that the following should be stated in this section: "No agreement was reached among delegations regarding the official working languages of the Tribunal."

24. Although the same idea was later reflected in chapter IV, section I, of the report, in the end the above suggestion was generally agreed upon and the new sentence was inserted at the end of the paragraph.

Section 4. Harmonization of jurisprudence

Section 5. Internal judicial practice

Section 6. Access by States not parties to the Convention

25. It was generally agreed that the three sections would be retained as they stood.

26. The Commission considered that it had finished the examination of chapter I, with the amendments agreed upon.

Chapter II. INTERNATIONAL AGREEMENTS

27. Several delegations raised questions about the wording used in some paragraphs and requested confirmation of their meaning so as to avoid any confusion. At issue was the use of the words "facilitates" in "... the Meeting of States Parties facilitates the Tribunal ..." (sect. 1, first para., second and third lines) and "adherence" in "... for adoption and adherence by all States" (sect. 2, last line of the recommendation). Some harmonization was also requested with regard to the French version.

Section 1. Recommendations concerning the draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany

28. One delegation from the Group of 77 was of the view that it was necessary to reflect in the report the obligations of the host country with regard to its becoming a Party to the Convention. His delegation therefore suggested the insertion of a footnote referring to paragraph 38 of the Final Act of the Convention, similar to the one found in document LOS/PCN/SCN.4/WP.15/Add.2. Another representative stated that although his delegation did not oppose that suggestion, he wanted to reiterate that his delegation wished for a universal acceptance of the Convention so that such a reference would become unnecessary. He suggested inserting the text of the footnote within square brackets.

29. In the end, it was generally agreed that the above reference to the Final Act would appear only in a footnote and not the text proper.

Section 2. Recommendations concerning the Draft Protocol on the Privileges and Immunities of the Tribunal

30. One delegation suggested redrafting the recommendation in order to harmonize it with the preceding ones. Some proposals were given. The new draft as suggested was as follows:

"Therefore

"THE PREPARATORY COMMISSION recommends that:

> the final draft Protocol ..., formulated by the Commission ..., addendum 3 hereto, should provide the basis for negotiating and entering into such a Protocol."

31. It was generally agreed to redraft the recommendation as suggested above.

32. The question of wording was raised again under the section. The word "approved" in "... was considered and approved ..." (third paragraph after the recommendation, penultimate line) was considered too strong a word.

33. It was suggested and generally agreed to replace it by "formulated".

34. Since the action referred to in paragraph 5 was obsolete because it had already been accomplished, and also since the Secretariat did not have any mandate to meet before the meeting of States Parties, it was suggested and agreed to delete altogether the fourth paragraph after the recommendation.

Section 3. Use of the United Nations laissez-passer by the Tribunal

35. In introducing the section, the Secretary pointed out that the section could also be moved under chapter III because it involved a relationship arrangement between two organizations (the United Nations and the Tribunal) rather than an original international agreement stricto sensu.

36. Several delegations supported the proposal and it was suggested, since it was no longer necessary, to delete the last sentence of the paragraph, which read: "The relevant issue may be dealt with in the context of chapter III; section 1 below."

37. Therefore it was generally agreed to move section 3 under chapter III as a new section 2, with the understanding that the last sentence of the paragraph would be deleted and the sections under chapter III renumbered accordingly.

Chapter III. RELATIONSHIP ARRANGEMENTS

Section 1. Recommendations concerning relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea

38. One delegation pointed out that the first paragraph of the section had been drafted in a confusing manner. He suggested a new drafting that would emphasize that the Commission wished for an effective relationship between the Tribunal and the United Nations. The new draft (submitted originally in French) was as follows: "In order to enable the International Tribunal for the Law of the Sea and the United Nations to have and develop a relationship of effective

cooperation, thereby facilitating the objectives of the Tribunal and the United Nations, it is ..."

39. This proposal was generally supported by the Commission.

40. Other delegations raised drafting points. It was suggested and generally agreed to modify the recommendation, in order to give the complete name of the agreement i.e., "Final draft Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea". Also, it was agreed that the last sentence in the second paragraph after the recommendation should read: "The final draft Relationship Agreement between the United Nations and the International Tribunal for the Law of the Sea was formulated by the Secretariat ..." (inclusion of the verb)

41. With regard to the different language versions, one delegation pointed out a misleading error in the French version of the same paragraph. It was suggested and generally agreed to reformulate the last sentence as follows:

> "Le Secretariat a établi le texte final du projet d'accord (...) en tenant dûment compte des vues exprimées à la Commission touchant la nécessité de réduire au maximum les dépenses de mise en place (...)".

Section 2. Relationship arrangement between the International Tribunal for the Law of the Sea and the International Seabed Authority

42. One delegation argued that the form of the section, and particularly the recommendation, was not in harmony with the rest of the report. He suggested using the verb "recommends" instead of "submits" since the form of the text suggested a recommendation. The Secretary pointed out that the issue concerned was one left unresolved throughout the discussions and therefore was left for the consideration of the meeting of States parties; hence the neutral formulation.

43. As a compromise, it was suggested to delete the last part of the sentence of the paragraph which read: "... as a basis for the deliberations of the meeting of States Parties."

44. In the end, the deletion was generally agreed upon by the Commission.

Section 3. Supplementary arrangements between the International Tribunal for the Law of the Sea and the International Court of Justice

45. One delegation argued that the content of the section did not correspond to the title since the Commission could not and was not empowered to take any decision as to the relationship between the International Court of Justice and the International Tribunal for the Law of the Sea. He suggested deleting altogether the section, leaving the door open for any future arrangements. Other delegations, however, were of the view that although no decision was taken

by the Commission on the matter, in the context of a factual report it was worth mentioning that the issue had nevertheless been taken up by the Commission.

46. A compromise suggestion to redraft the section was put forth by one delegation, as follows: "Consequent upon the communication of the Registrar of the International Court of Justice, the Special Commission decided that it would not be appropriate for it to consider such relationship arrangements." The rest of the sentence would then be deleted.

47. In the end, it was generally agreed to accept the above proposal for a redrafted section 3.

Chapter IV. ADMINISTRATIVE ARRANGEMENTS

Section 1. Recommendations concerning administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea

and

Recommendations concerning the scheme for the initial phasing-in of the establishment of the International Tribunal for the Law of the Sea

48. One delegation was of the view that with regard to the unresolved languages issue, the paragraph following the recommendation was too decisive. He suggested deleting the text from: "and taking into account" to "or advisory opinion".

49. Several other suggestions were made with regard to the matter. In the end it was generally decided not to make the suggested deletion but instead to insert the words "one or six" before "official working languages" (tenth line of the same paragraph).

50. On a drafting matter, one delegation suggested that since the document was a Preparatory Commission draft report it was necessary to reformulate, wherever required, the sentences containing reference to the role of the Secretariat. Therefore, in the second paragraph following the recommendation, he suggested that in the first line the words "that the Secretariat" be deleted and replaced by the word "to". The same change would be made in sections 2 and 3.

51. The Commission generally favoured the suggested drafting changes.

52. With regard to the third paragraph following the recommendation, one delegation suggested deleting as inadequate the word "interested" (fourth line). Another delegation pointed out that Czechoslovakia and Tunisia had joined the other sponsors of the relevant proposal as now referred to in document LOS/PCN/SCN.4/WP.13/Corr.1. He requested the new information to be reflected consequently in the report. It was also suggested to add at the end of the same paragraph the same sentence as appeared in chapter I, section 3, with regard to

the official working languages: "No agreement was reached among delegations regarding the official working languages of the Tribunal."

53. The Commission generally agreed to the deletion of the word "interested" and to the insertion of a reference to document LOS/PCN/SCN.4/WP.13/Corr.1 and the additional co-sponsors of the proposal. It was also generally agreed to add the new sentence at the end of the paragraph, as mentioned above.

Section 2. Recommendations concerning the draft financial rules and staff regulation

54. One delegation pointed out that the section did not comprise a recommendation. Therefore, he suggested deleting in the title of the section the words "Recommendations concerning the". The title would then read: "Draft financial rules and staff regulations". The same remark was made in regard to section 3, whose title would then read: "The initial financing and budget of the International Tribunal for the Law of the Sea."

55. Both changes were generally favoured by the Commission.

Section 3. Recommendations concerning the initial financing and budget of the International Tribunal for the Law of the Sea

56. One delegation suggested that the English text be harmonized more accurately with the French text and that in the paragraph beginning "The Preparatory Commission submits:", the English word "recommendations" be replaced by the word "proposals". The same change would apply in the third sentence of the following paragraph.

57. Another delegation suggested adding the following words in the same paragraph: after "formulate" (third sentence), the words "for the Meeting of States Parties".

58. It was understood that the above proposal would also entail the deletion, in the preceding paragraph, of the words "to provide a basis".

59. The Commission generally agreed to make the above addition and consequent deletion.

Chapter V. THE PERMANENT HEADQUARTERS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

60. There were no comments on section 1, which therefore was generally agreed upon by the Commission as it stood.

Section 2. Recommendations concerning the building requirements and facilities of the International Tribunal for the Law of the Sea provided by the host country

and

Section 3. Recommendations concerning the requirements and facilities necessary to supplement those provided by the host country

61. The only comments made concerning these two sections were of a drafting nature. One delegation pointed out that the word "building" was missing both in the French title of section 2 and in the English title of section 3. Another delegation was of the view that it would be more logical for the enumeration of furniture and equipment intended to be provided by the host country, which was currently under section 3, to appear instead at the end of section 2.

62. In the end, it was generally agreed to make the above changes i.e., to harmonize both titles and in all language versions and to make the consequential cross-references that would result from the rearrangement of sections.

63. No comments were made with regard to chapter VI.

64. At the end, the Commission noted that it had concluded the consideration of its report.

65. With regard to the annexes, one delegation from the Group of 77 pointed out that in annex II some documents of particular relevance to Special Commission 4 were not listed. He drew especial attention to document LOS/PCN/85 of 28 April 1987 and suggested that it be inserted. Another delegation supported his comment and suggested that at a later stage a list should be provided of the missing documents to be included.

66. Since the present document is a summary of discussions, it is not possible to reflect each and every intervention fully or to reproduce suggested formulations. The Secretariat has maintained a complete record of all suggestions, and these will be taken into account when redrafting the document. Should any representative feel that an important matter has been omitted, the Chairman would appreciate being informed.